

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE CARPENTERS
ANNUITY, APPRENTICESHIP, LABOR-
MANAGEMENT COOPERATION, PENSION AND
WELFARE FUNDS,

Petitioners,

-against-

BAEHRE & SHUMWAY INC.,

Respondent.
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For Online Publication Only

ORDER

15-CV-3856 (JMA) (ARL)

**FILED
CLERK**

1/8/2016 11:48 am

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

AZRACK, United States District Judge:

Before the Court is petitioners Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds' unopposed petition to confirm an "Audit Order and Deficiency Award" (the "Order") issued against respondent Baehre & Shumway (Order, Pet., Ex. D, ECF No. 1.) The Order directs the respondent to: (1) submit to an audit; (2) pay for all costs relating to the audit; (3) make all "future contributions" owed to petitioners in a prompt and timely manner; and (4) to pay for all court costs incurred to enforce the Order. (Id. at 2-3.)

On July 9, 2015, petitioners served a copy of the petition and its supporting memorandum of law on defendant via the New York Department of State's Division of Corporations, Records and Uniform Commercial Code. (Aff. of Serv., ECF No. 6.) Respondent has not responded to the petition.

Petitioners ask that the Court: (1) confirm the Order; (2) award petitioners \$17,173.09 plus interest for unpaid contributions; (3) award judgment ordering respondent and its officers to submit to an audit; and (4) award petitioners reasonable attorneys' fees and costs incurred in bringing this

action. (Pet. at 6.) Because respondent has not answered the petition, the Court treats the petition as an unopposed motion for summary judgment. See D.H. Blair & Co. v. Gottdiener, 462 F.3d 95, 109–110 (2d Cir. 2006).

The Court grants the petition insofar as it seeks confirmation of the Order. The Court also awards petitioners reasonable attorneys’ fees and costs as follows: \$967.50 in attorneys’ fees and \$400 in costs. However, the Court denies the petition to the extent it seeks an award of \$17,173.09 plus interest for unpaid contributions from November 1, 2009 to March 31, 2015. Although the arbitrator found that respondent owed an estimated \$17,173.09 to petitioners and captioned his decision “Audit Order and Deficiency Award,” the arbitrator did not award that amount to petitioners. (Compare Order at 1–2, with Trustees of Empire State Carpenters Annuity, Apprenticeship, Labor-Management Cooperation, Pension and Welfare Funds, v. CMI Casework & Millwork, Inc., No. 14-cv-2891 (E.D.N.Y), Audit Order and Deficiency Award at 2–3, Epstein Decl., Ex. D, ECF No. 13.) Rather, the arbitrator appears to have determined that an award for unpaid contributions should be based on audit of respondent. Accordingly, the Court declines to award petitioners \$17,173.09.

For the foregoing reasons, the Court grants the petition in part and denies it in part. The Order is confirmed. Respondent must: 1) submit to an audit as set forth in the Order; (2) pay for all costs relating to the audit; and (3) make all future contributions to petitioners in a prompt and timely manner. Petitioners are also awarded reasonable attorneys’ fees and costs totaling \$1,367.50. The petition is denied in all other respects.

The Clerk of Court is directed to mail a copy of this Order to respondent at the following addresses:

1. Baehre & Shumway, Inc.
181 Industrial Road
Horsehead, New York 14845
2. Baehre & Shumway, Inc.
230 Colorado Avenue
Buffalo, NY 14215

SO ORDERED.

Dated: January 8, 2015
Central Islip, New York

/s/
Joan M. Azrack, U.S.D.J.